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Supreme Court, U.S.
FILED

06-248 JUN 17 2006

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NO.: _____

IN THE

Supreme Court of the United States

Tiffany Edmonds

Petitioner

-vs-

State of Indiana

Respondent

On Petition for Writ of Certiorari
To The Indiana Court of Appeals

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QUESTION PRESENTED

Did the Indiana Court of Appeals' opinion affirming the trial court's admission of Edmonds' statement sufficient depart from the procedural safeguards instituted in *Miranda v. Arizona,* 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966) and *Edwards v. Arizona,* 451 U.S. 477, 101 S.Ct. 1880, 68 L.Ed.2d 378 (1981) to protect the right against "self-incrimination" when in concluded that Edmonds', "yes" response to the question, "[d]o you wish to have an attorney at this time?", was ambiguous and further inquiry in a non-coercive manner was permitted when the interrogator believed that Edmonds may be mistaken in her "yes" response?

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PETITION FOR WRIT OF CERTIORARI

OPINONS BELOW

The opinion of the Indiana Court of Appeals that is appealed is reported as *Tiffany Edmonds v. State of Indiana,* 840 N.E.2d 456 (2006), *trans. den.*

JURISDICTION

The Court's opinion under appeal was entered on January 18, 2006. A timely Petition of Transfer was filed on February 17, 2006 and was denied on March 21, 2006. Both the order denying transfer by the Indiana Supreme Court and the Court of Appeals decision are attached in the Appendix.

CONSTITUTIONAL PROVISIONS INVOLVED

"[N]or shall be compelled in any criminal case to be a witness against himself;" U.S. Constitution, Amend. V

"In all criminal prosecutions, the accused shall enjoy the right - to have the Assistance of Counsel for his defence." U.S. Constitution, Amend. VI.

"[N]or shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." U.S. Constitution, Amend. XIV.

I. STATEMENT OF THE CASE

A. INTRODUCTION

Tiffany Edmonds (hereinafter "Edmonds") was advised of her "Miranda rights". After being advised of these rights, Edmonds needed to complete a waiver form relinquishing these rights. One question of the form stated, "Do you wish to have an attorney at this time?", and Edmonds wrote "yes". After Edmonds wrote "yes", Detective Williams (hereinafter "Williams") questioned Edmonds about the response. Edmonds, subsequently, changed her "yes" response to "no". Williams, then, obtained an incriminating statement from

Edmonds. Edmonds challenged the admission of this statement.

Edmonds contends that she clearly and unequivocally invoked her right to an attorney. After such an invocation, Edmonds contends that all questioning should have ceased until an attorney was provided and any subsequent statement was involuntary and therefore inadmissible. The Indiana Court of Appeals held that the "yes" response was ambiguous, based upon Williams past experiences from questioning suspects who would often change their answer to this question when he further questioned them about a "yes" response, so it was objectively reasonable to clarify this "yes" response. Edmonds would contend that the Indiana Court of Appeals disregarded a "bright line" rule of this Court laid out in *Edwards v. Arizona*, 451 U.S. 477, 101 S.Ct. 1880, 68 L.Ed.2d 378, (1981) by using a subjective test as opposed to an objective test. This Court should grant Edmonds Petition for Writ of Certiorari from the Indiana Supreme Court to correct an erroneous interpretation of this Court's well established precedent.

B. FACTS AND PROCEDURAL HISTORY

On the evening of November 29, 2003, Carlos Ruiz went to a strip club in Gary, Indiana. While at the club, Ruiz met a dancer, who called herself "Jane", and bought her a drink. In addition, he paid her to perform a lap dance for him. When Ruiz purchased the drink and lap dance, he pulled out approximately $900 in cash.

Ruiz and "Jane" agreed to meet after work at Ruiz's motel room. Ruiz provided "Jane" with his cell phone number. Ruiz left the strip club and returned to his motel room in Michigan City, Indiana.

After her shift, "Jane" called Ruiz early that morning wanting to meet him. "Jane" arrived at the motel and Ruiz had her come into his room. When she was in the room, Ruiz claimed that "Jane" was attempting to prevent the door from

closing.[1] "Jane" wanted something cold to drink and suggested that they retrieve ice from down the hall. When they left the room, Ruiz claimed "Jane" attempted, again, to prevent the door from closing. They walked down the hall to retrieve the ice and returned to the room. Once again, "Jane" attempted to prevent the door from closing.

Once they were back in the motel room, an unknown male barged into the room with a gun. The man was shouting at Ruiz and ordered him into the bathtub. The unidentified man duct taped Ruiz's hands behind his back and struck him several times aside the head with the gun. The man was shouting at "Jane" to "get everything, bitch".

Ruiz heard the man and "Jane" leave and he was able to pull himself out of the tub and go outside. Another patron of the motel saw Ruiz and summoned police.

When the police arrived, Ruiz told them that he had heard a knock on his door and he thought that it was the maid. When he looked through the peep hole, he saw a female that he thought was a maid and when he opened the door a male barged into the room that must have been hiding out of his sight. The man and woman entered the room together and robbed him.

Ruiz was taken to the hospital. After he was at the hospital, he advised the officer that he wanted to change his story. Ruiz advised that the female was a stripper that he had met at a club that night and he had her invited her to his motel room. However, he maintained the part that when he looked through the peep hole he saw "Jane" and when he opened the door another unknown male barged into the room and robbed him. Ruiz never told the police "Jane" had actually been in his room when the unknown male barged

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[1]The doors to the motel room automatically locked when closed.

into the room. At trial, Ruiz contended that he had changed this part of the story, because he was afraid what people might think about him having a stripper in his motel room.

The police went to the club and learned that "Jane" was actually Tiffany Edmonds. The police attempted to contact her, but were unsuccessful. Prior to Edmonds arrest, Williams did a background check and learned that Vincent Tillotson had been arrested with her for a robbery charge in Wisconsin. As a result, Williams obtained a picture of Tillotson to place in his file regarding this investigation. The police charged Edmonds with Robbery, as a Class B felony, and Criminal Confinement, as a Class B felony.

Later, Edmonds was arrested on the warrant and brought to the Laporte County jail. Detective Williams and Litchford had her summoned from her cell to an interview room. The interview room was equipped with recording equipment and Williams also had a hand held recorder. However, the detectives did not tape the initial interrogation.

Williams told Edmonds about the charges filed against her and that they were there to speak with her about them. He indicated that before they could speak with her that they needed to advise her of her rights. Edmonds said that was "fine". At this point, Edmonds did not demand an attorney.

Prior to any interrogation, the detectives review a standard form with all suspects which is entitled "LaPorte County Prosecuting Attorney's Office Constitutional Rights Form". [App. pp. 18-19.] This form consists of two parts, which include an advisement section and a waiver section. [Id.] The advisement section consists of five enumerated sentences which the suspect must read while the officer simultaneously reads aloud. [Id.] After each sentence, the suspect is directed to place his or her initials on the space provided to acknowledge same. [Id.] The first four enumerated sentences are the "Miranda rights". The fifth

enumerated sentence states, "You can decide, at any time, to exercise these rights and not answer any questions or make any statements."

The bottom portion has a heading entitled, "Constitutional Rights Waiver". The directions indicate that the person should write "yes" or "no" next to each question in the space provided after the suspects reads each question and it has been read by the detective. There is five enumerated questions which are:

1. Have you read the above statements of your constitutional rights and have they been read to you? _____

2. Do you understand each of these rights? _____

3. Do you wish to have an attorney at this time? _____

4. Has any force, threats or promises of any kind or nature been used by anyone to influence you to waive these rights? _____

5. Are you willing to talk with the police? _____

[App. p. 19.]

Detective Williams read each of the enumerated sentences to Edmonds as she followed along under the top or advisement portion. She placed her initials next to each of the sentences in the advisement section acknowledging that each of her rights had been read to her.

After the top portion was completed, Edmonds was willing to answer "yes" or "no" to questions on the bottom or waiver portion. Edmonds wrote "yes" next to the first two

enumerated questions. Williams assumed the hand written answer of "yes" was self-explanatory. After she read the third question and it was read aloud to her by Williams, she wrote "yes" next to the question which stated, "Do you wish to have an attorney at this time?". After this response, Williams did not terminate the interrogation or provide Edmonds an attorney; instead, he asked "you do want an attorney before you speak to the police." Edmonds, then, said "no". At that point, Williams instructed Edmonds to write "no", cross out the "yes", and place her initials next to it.

Williams admitted that the answer "yes" to the question "Do you wish to have an attorney at this time?" meant that the person wanted an attorney. [App. p. 35.] Williams never provided an attorney to Edmonds. [App. p. 37.] Williams contended that he thought Edmonds wanted to speak with him up to that point and that she may have been mistaken in her response to question number three. He thought that the waiver section was confusing and she may have become complacent and answered "yes" next to question number three after having written "yes" next to questions number one and two.

When using this waiver form in the past with other suspects, Williams had questioned other suspects about a "yes" response to question number three and the other suspects subsequently change their answer to "no". Williams concluded from this experience that the suspects must simply have become complacent after writing "yes" to questions one and two, so they mistakenly wrote "yes" next to question number three. Based upon this past experience, Williams had adopted a policy of always questioning suspects about a "yes" response to question number three in order to obtain their true intent. However, Williams admitted that he could not read any suspect's mind and he had never questioned suspects about their answers to any of the other questions on the

waiver form.

After Williams questioned Edmonds about her response to question number three and Edmonds changed her answer, Williams continued down the waiver section through questions four and five. Williams did not question Edmonds about her hand written responses to questions four and five. Williams understood all of Edmonds other answers to be self-explanatory.

While Williams believed that there was often problems with question number three, it was always his policy to never record the process of going over the waiver form. Williams contended that he did not use any coercion when questioning Edmonds or anyone else about their response to question number three.

After he went over the form, Williams spoke with Edmonds for about thirty minutes without recording the initial interview. After the thirty minutes, Williams turned on a tape recorder and interviewed Edmonds. Before beginning the recorded interview, Williams advised Edmonds again of her "Miranda rights" and elicited a waiver from her of those rights.

Edmonds advised Williams of her age and that she had only completed the seventh grade. Edmonds denied knowing that the unidentified individual was going to rob Ruiz. However, Edmonds indicated that she knew the unidentified individual. Edmonds admitted to meeting with the individual and using drugs with him before going to Ruiz's motel room. Further, Edmonds indicated that the unidentified male drove Edmonds' mother's vehicle to the motel and that she left with him after the incident.

Edmonds identified the male as Vincent Tillotson. At the time of the interview, Williams had Tillotson's picture in the file in the interview room during the interrogation. Later, it was determined that Tillotson was incarcerated at the time of the incident and could not have been the person that

robbed Ruiz. Williams, also, contended that it was Edmonds that had brought up Tillotson and that he did not lead her into identifying him. However, Williams did not record this part of the interview.

The trial court ordered discovery soon after the charges were filed. The state provided counsel for the defendant with some discovery, but did not provide the "LaPorte County Prosecuting Attorney's Office Constitution Rights Form" until seven days before the trial. After receiving this form, Edmonds filed a motion to suppress her statement. [App., pp. 13-17.] The trial court heard arguments about this motion after jury selection. [App. pp. 20-50.] The trial court denied the motion to suppress and the statement was admitted at Edmond's trial over her objection. [App. pp. 50-51.]

Edmonds was found guilty of Robbery, as a Class B felony and Criminal Confinement, as a Class B felony. [App. 52-53.] The trial court sentenced her to the presumptive sentence of ten (10) years on each count and ordered the sentences to be served consecutively.

Edmonds appealed contending that the trial court erred when it permitted the state to introdu her statement in contravention of her Fifth and Sixth Amendment rights to the United States Constitution and when it ordered her sentences to be served consecutively. The Court of Appeals affirmed in part and reversed in part. [App., pp. 3-12.] The Court of Appeals did not believe that it was an abuse of discretion to admit Edmonds' statement which was obtained after she wrote "yes" next to the question "Do you wish to have an attorney at this time?". However, the Court of Appeals did reverse the sentencing order and ordered the sentences be served concurrently. Edmonds filed a timely petition for transfer with the Indiana Supreme Court requesting they exercise their discretionary review and this petition was denied on March 21, 2006. [App. pp. 1-2.]

II. ARGUMENT

Edmonds contends that the trial court erred when it admitted her statement after she invoked her right to an attorney when Williams was attempting to obtain a waiver of her "Miranda rights" in contravention of *Edwards v. Arizona*, 451 U.S. 477, 101 S.Ct. 1880, 68 L.Ed.2d 378 (1981). Once a suspect invokes her right to an attorney, all questioning must cease until an attorney is present. [*McNeil v. Wisconsin*, 501 U.S. 171, 177, 111 S.Ct. 2204, 115 L.Ed.2d. 158 (1991). If the police do initiate an encounter and no attorney is present, the suspect's statement are presumed involuntary and therefore inadmissible as substantive evidence at trial. [*Id.*] Whether a suspect's words constitute a request for an attorney is a legal determination reviewed de novo. [*Robinson v. Borg*, 918 F.2d 1387, 1390 (9th Cir. 1995); *Smith v. Illinois*, 469 U.S. 91, 105 S.Ct. 490, 83 L.Ed.2d 488 (1984).]

The Fifth and Fourteenth Amendment protect a suspect from becoming a witness against himself and to the assistance of an attorney during custodial interrogation.[2] [*Miranda v. Arizona*, 384 U.S. 436, 439, 86 S.Ct. 1602, 16 L.Ed.2d 694(1966).] This Court was concerned that the Constitution not become a "form of words", so it held that

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[2] The Sixth Amendment also guarantees a person the assistance of an attorney at all critical stages after the filing of charges. [*Brewer v. Williams*, 430 U.S. 387, 97 S.Ct. 1232, 51 L.Ed.2d 424 (1977).] During or prior to custodial interrogations, a person must invoke his right to an attorney under the Sixth Amendment as well. [*Michigan v. Jackson*, 475 U.S. 625, 106 S.Ct. 1404, 89 L.Ed.2d 631 (1986).] The determination whether a person has invoked his right to an attorney under the Sixth Amendment is the same as the Fifth Amendment. [*Michigan v. Harvey*, 494 U.S. 344, 110 S.Ct. 1176, 108 L.Ed2d 293 (1990).] Edmonds would contend that her arguments raised throughout this Petition that she invoked her right to an attorney under the Fifth Amendment also means that she invoked her right to an attorney under the Sixth Amendment to the U.S. Constitution as well.

procedural safeguards must be in place to secure the privilege against self-incrimination. [*Id.* at 444.] Those procedural safeguards established that the admissibility in evidence of any statement given during custodial interrogation of a suspect would depend on whether the police provided the suspect with four warnings. [*Dickerson v. United States,* 530 U.S. 428, 435, 120 S.Ct. 2326, 147 L.Ed.2d 405 (2000).] These warnings (which have come been known as the "Miranda rights" and which will be referred to as same throughout this brief) are: a suspect has a right to remain silent, that anything he says can be used against him in a court of law, that he has the right to the presence of an attorney, and that if he cannot afford an attorney one will be appointed to him at no cost. [*Id.*] After being advised of the "Miranda rights, the accused must knowingly and voluntarily waive those rights before a statement will be admissible. [*North Carolina v. Butler,* 441 U.S. 369, 373, 108 S.Ct. 2389, 101 L.Ed.2d 197 (1979).]

In *Edwards v. Arizona,* 451 U.S. 477 (1966), this Court added an additional layer of protection which required that the police cease all further questioning when the accused invokes his or her right to an attorney. This rule was based upon this Court's perception that an attorney occupies a critical position in our legal system because of his unique ability to protect the Fifth Amendment rights of a client undergoing custodial interrogation. [*Fare v. Michael C.,* 442 U.S. 707, 719, 99 S.Ct. 2560, 61 L.Ed.2d 197 (1979).] Moreover, the attorney's presence helps guard against overreaching by the police and ensures that any statement, if given, is accurately transcribed for presentation into evidence. [*Id.,* at 719.]

The U.S. Supreme Court has emphasized the virtues of a bright-line rule in cases following *Edwards* as well as *Miranda.* [*Arizona v. Roberson,* 486 U.S. 675, 681, 108 S.Ct. 2093, 100 L.Ed.2d 704 (1988).] This bright-line rule that all

questioning must cease upon a request for an attorney has the virtue of informing police and prosecutors with specificity as to what they may do in conducting custodial interrogations, and of informing courts under what circumstances statements obtained during such custodial interrogations are not admissible. [*Fare v. Michael C.*, 442 U.S. at 718.] This gain in specificity, which benefits the accused and the State alike, has been thought to outweigh the burdens that the decision in *Miranda* and *Edwards* imposes on law enforcement agencies and the courts by requiring the suppression of trustworthy and highly probative evidence even though the confessions may be voluntary under traditional Fifth Amendment analysis. [*Roberson*, at 681-682.]

A. EDMONDS INVOKED HER RIGHT TO AN ATTORNEY

A court must take an objective approach to determine whether the accused has invoked her right to an attorney. [*Davis v. U.S.*, 512 U.S. 452, 458-459, 114 S.Ct. 2350, 129 L.Ed.2d 362 (1994).] Invocation of the right to an attorney requires some statement that can reasonably be construed to be an expression or desire for an attorney. [*Davis*, at 459.] A request for an attorney should be broadly interpreted. [*Michigan v. Jackson*, 475 U.S. at 633.] However, interpretation is only required where the suspect's words, understood as ordinary people would understand them, are ambiguous. [*Connecticut v. Barrett*, 479 U.S. 523, 529, 107 S.Ct. 828, 93 L.Ed.2d 920 (1987).] A response either is or is not a request for an attorney. [*Smith v. Illinois*, 469 U.S. 91, 97-98, 105 S.Ct. 490, 83L.Ed.2d 488 (1984).]

This Court has found that the response of "uh, yeah. I'd like to do that." to the question "You have a right to consult with and lawyer and have a lawyer present with you when you're being questioned. Do you understand that?" was a request for an attorney and any statement obtained in violation of that request was inadmissible. [*Smith v. Illinois*,

469 U.S. at 96.] In *Smith,* the defendant was arrested for a robbery. After his arrest, he was brought down to an interview room for an interrogation. Prior to any questioning, the detective was advising the defendant of his "Miranda rights". During the advisement, the detective stated, "You have the right to consult with an attorney and have a lawyer present with you when you're being questioned. Do you understand that?" and the defendant stated, " Uh, yeah, I'd like to do that.". At this point, the detective did not terminate the questioning and continued to advise the defendant of his "Miranda rights". After the detective completed reading the full "Miranda rights", the following colloquy occurred:

Q: Do you wish to talk to me at this time without a lawyer being present?

A: Yeah and no, uh, I don't know what's what really.

Q: Well. You either have [to agree] to talk to me this time without a lawyer being present and if you do agree to talk with me without a lawyer being present you can stop at any time you want to.

A: All right. I'll talk to you then.

The defendant provided the detective with a statement. Initially, the defendant advised the police he knew about the planned robbery, but was not a participant. After further questioning, he claimed that he had did it. Later, he returned to his original story.

The defendant attempted to suppress his statement. The trial court denied the motion and his statement was admitted at trial over his objection. The defendant was found guilty and he appealed. The Illinois Court of Appeals and Supreme Court affirmed. This Court granted a writ of certiorari.

This Court held that the defendant had unambiguously invoked his right to an attorney and his statement should not have been admitted. [*Smith,* at 97-98.] This court reasoned that there was nothing ambiguous about his response to the

police when advised of his right to an attorney. [*Id.*] When a suspect invokes his right to an attorney, all questioning must cease unless the suspect reinitiates communication. [*Id.*] Further, the court reasoned that subsequent responses from a suspect to police initiated questioning after an invocation cannot be used to create an ambiguity. [*Id.*]

The defendant in *Smith* clearly invoked his right to an attorney when advised of his right to have an attorney. After invoking this right, the detective continued to advise the defendant of his "Miranda rights" and then questioned him about waiving those rights.[3] His subsequent responses to inquiries about waiving his "Miranda rights" were used to create an ambiguity by the Illinois courts. However, this Court made it clear that was impermissible.

This Court made it clear that *Edwards* established a "bright line" rule. [*Id.* at 98] In the absence of such a bright line prohibition, the authorities through "badgering" or "overreaching" –explicit or subtle, deliberate or unintentional–might wear down the accused and persuade him or her to incriminate himself or herself notwithstanding the earlier request for an attorney. [*Id.*] "Using an accused's

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[3]In the late Chief Justice Rehnquist's dissenting opinion, he pointed out that the invocation occurred while the officer was advising the suspect of his "Miranda rights" and the officer was not questioning the suspect. He pointed out that the officer should have been able to finish reading those rights to the suspect so that he fully understood and appreciated them before the suspect determined whether to invoke them. After the suspect had been fully advised of his "Miranda rights", the suspect chose to waive them.

subsequent responses to cast doubt on the adequacy of the initial request itself is even more intolerable. No authority, and no logic, permits the interrogator to proceed.... on his own terms and as if the defendant had requested nothing, in the hope that the defendant might be induced to say something casting retrospective doubt on his initial statement that he wished to speak with an attorney or not at all." [*Smith*, at 98-99.]

Like the Illinois Appellate Courts, the Indiana Court of Appeals clearly erred when it considered Edmonds' subsequent responses to police questions after her answer of "yes" to the question "Do you wish to have an attorney at this time?".[4] No reasonable person could have concluded that "yes" means anything other than "yes".[5] Further, Williams admitted that he understood "yes" and "no" responses to be self-explanatory. Williams admitted that the response of "yes" to the question, "Do you wish to have an attorney at this time?" means that a person wanted an attorney. Any subsequent responses to Williams questions regarding her initial response to this question cannot be considered in accordance with this Court's holding in *Smith*. The trial court and Court of Appeals cannot consider the changes

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[4]Edmonds response of "yes" to the question "Do you wish to have an attorney at this time?" occurred after she had been fully advised of her "Miranda rights". Unlike the comment made by the suspect in *Smith* when being read his "Miranda rights", Edmonds had been fully advised of her "Miranda rights" and when directly questioned about her desire for an attorney she expressly invoked her right to an attorney. Even under the late Chief Justice Rehnquist's dissent, Edmonds invoked her right to an attorney. If Edmonds' factual situation were before this Court when *Smith* was decided, the opinion may very well have been unanimous.

[5]The Maryland Court of Appeals has concluded that "no" means "no" and such a request is unambiguous. [*Billups v. State*, 135 Md.App. 345, 762 A.2d 609 (Md.Ct.App. 2000).]

Edmonds made on the waiver form. No authority, no logic would permit such a practice. Without this evidence, the state cannot meet its burden that Edmonds waived her right to an attorney and her subsequent statement must be suppressed.

The State of Indiana and the Court of Appeals contended that this case was distinguishable from *Smith* based upon the fact that they were claiming there were other ambiguities in addition to her subsequent response in changing her answer from "yes" to "no". This Court made it clear that its holding in *Smith v. Illinois* was narrow and did not address the circumstances in which a request would be characterized as ambiguous as a result of preceding events or the request itself, nor the consequences of such a situation. [*Id.*, at 99.] Further, this Court indicated that ambiguities can occur in statements made by the suspect preceding the request for counsel or in the request itself. [*Id.*, at 96.]

B. NO SUBJECTIVE BASIS CAN BE USED TO CLARIFY EDMONDS' UNAMBIGUOUS REQUEST FOR AN ATTORNEY.

The Indiana Court of Appeals did not contend that there was any ambiguity in the request itself[6]; rather, the ambiguity was based upon events preceding the request for an attorney. The Indiana Court of Appeals contended that these preceding events were: 1.) Williams' belief that

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[6]Courts have often concluded that requests for counsel may be disregarded as equivocal when preceded by words such as "maybe" or other such phrases which only indicate that the suspect is thinking about obtaining counsel. [*See, Davis*, at 462, (holding "maybe I should talk to a lawyer" to be equivocal); *Robtoy v. Kincheloe*, 871 F.2d 1478, 1479 (9th Cir. 1989), (holding "maybe I should call by attorney" to be equivocal); *Ledbetter v. Edwards*, 35 F.3d 1062, 1069 (6th Cir. 1994) (holding "it would be nice to have an attorney" to be equivocal). Unlike these requests for an attorney, Edmonds request was not preceded with any modifier that would lead any reasonable person to believe that her request itself was ambiguous.

Edmonds wanted to talk with him prior to the her request for an attorney; and 2.) Williams' belief that Edmonds was complacent and mistakenly wrote "yes" to the question which was based upon Williams' past experiences with other suspects when going over the Laporte County Prosecutor's Waiver Form. Edmonds contends that neither event created any ambiguity necessitating clarifying her unambiguous request and will address each contention below.

After this Court reversed the Illinois Supreme Court in *Smith v. Illinois,* the Illinois Supreme Court dealt with a case very similar as Edmonds in *People v. St. Pierre,* 522 N.E.2d 61 (Ill. 1988).] In *St. Pierre,* the defendant was arrested for a double homicide. When the defendant was arrested, he was advised of his "Miranda rights" on three separate occasions and he never invoked his right to an attorney. The defendant specifically advised the detective that he wanted to speak with him about the crime. The detective advised him that they had to wait until the state's attorney arrived. When the state's attorney arrived, the state's attorney advised the defendant of his "Miranda rights". Prior to answering any questions, the defendant responded "yes" about wanting an attorney. A court reporter transcribed what went on between the state's attorney and the defendant. The transcript indicates that the defendant stated "yes" about wanting an attorney. However, a clear reading of the entire transcript shows some ambiguity as to what the defendant wanted. At the end of the transcribed colloquy, it is clear that defendant agreed to talk without an attorney. The defendant provided an incriminating statement to the police which was admitted at his trial. The defendant was convicted and he appealed.

The Illinois Supreme Court reversed the conviction based upon the admission of the incriminating statement, because it concluded that the defendant had invoked his right to an attorney and all questioning should have ceased.

[*People v. St. Pierre*, at 68.] The court reasoned that it was improper to consider any of the defendant's subsequent responses to police initiated questioning after the defendant stated "yes" that he wanted an attorney based upon this Court's holding in *Smith*. [*Id.*, at 68.] The state contended that there was also an ambiguity based upon the defendant's statement to the detective that he wanted to provide a statement prior to the invocation. However, the court concluded that ambiguous statements or events that precede a request for an attorney only have relevance to the clarity of the request. [Id.] This conclusion was based upon this Court's holding in *Connecticut v. Barrett*, 479 U.S. 523, 529 that "interpretation is only required where the defendant's words, understood as ordinary people would understand them, are ambiguous." [*Id.*, at 68.] The Illinois Supreme Court held that the defendant's response spoke for itself regardless of his prior statement to the detective that he wanted to talk. [*Id.*]

While not mentioned by the Illinois Supreme Court, this Court has held that a suspect has the right to request an attorney at any time during or prior to an interrogation. [*Miranda v. Arizona*, 384 U.S., at 444-445.] The fact that a suspect initially indicates that he or she wants to speak with law enforcement without an attorney does not mean that he or she can't change his or her mind. Further, the suspect may not even know of the rights until he or she is advised. This Court's concern in adopting the procedural safeguard of advising suspects of their rights was to ensure that the right against self-incrimination was not just a form of words and a suspect understood his or her rights. It is very possible that once a suspect learns of the rights, he or she may decide to assert such rights. This was the basic of purpose of *Miranda* to allow an individual the choice to speak or remain silent.

Like the defendant in *St. Pierre*, Edmonds may not have objected when Williams read her the "Miranda rights".

However, her silence or acknowledgment of those rights does not necessarily mean Edmonds wanted to talk. Even if Edmonds initially indicated that she wanted to talk, this does not mean that she knew she had the right to be silent or to an attorney until she was so advised. Edmonds had the right to request an attorney or remain silent at any time. After being advised of her rights and before any questioning took place, Edmonds was asked whether she wanted an attorney and at which time she answered "yes". Edmonds response was unambiguous and unequivocal. No interpretation was necessary and any subjective belief on the interrogator's part up to that point as to whether Edmonds wanted to talk does not change the clarity of her "yes" response.

This Court has also emphasized that what is important is the spoken words between the interrogator and suspect and not the subjective beliefs of either party. In *Davis v. United States*, 512 U.S. 452, 114 S.Ct. 2350, 129 L.Ed.2d 362 (1994), this Court held that law enforcement officers interrogating a suspect in custody were not required to stop an interrogation when a suspect made an ambiguous or equivocal request for an attorney nor were said officers limited in asking clarifying questions to ascertain whether the suspect wanted to exercise his or her right to an attorney prior to proceeding with the interrogation. In so holding, this Court reasoned that the safeguards provided the suspect are the warnings themselves. [*Davis*, at 461.] Once the warnings are provided, it is an affirmative duty upon the suspect to clearly assert his right to an attorney. [*Id.*, at 460-461.] It is the objective words spoken by the suspect and interrogator. [*Id.*] While concurring with the result in *Davis*, Justice Souter noted that the holding adopted by this Court will unfortunately result in some suspects being denied their request for an attorney due to their linguistic skills. [*Id.*, at 472-476]

The Indiana Court of Appeals also believed that

Edmonds "yes" response was ambiguous, because of Williams past experiences in interrogations with this particular waiver form. Williams indicated in the past that suspects frequently wrote "yes" to the question, "Do you wish to have an attorney at this time?". After writing this "yes" response, it was usually his policy to question them about that response. Oftentimes, the suspect would change the "yes" to "no". Based upon these experiences, Williams concluded that suspects must have become complacent and simply wrote "yes" to this question after they had written "yes" to the preceding two questions. Williams concluded that this meant the suspect mistakenly wrote "yes" when he meant "no". Based upon Williams' past experiences, the Indiana Court of Appeals believed that Williams had an objectively good faith basis to ask non-coercive questions regarding a "yes" response to the question "Do you wish to have an attorney at this time?".

While Williams may believe a "yes" response was a mistake from his past experiences during interrogations, Edmonds would contend that Williams' policy of questioning suspects that wrote "yes" abrogated a "bright line" rule adopted by this Court and any changes to the "yes" response was not the result of a mistake, but the result of coercion inherent in the custodial interrogation process itself. [*See. Minnick v. Mississippi,* 498 U.S. 146, 150-151, 111 S.Ct. 486, 112 L.Ed.2d 489 (1990).] Under Williams policy, any suspect that answered "yes" to the question "Do you wish to have an attorney at this time?" would be questioned about that answer and would have to invoke his or right to counsel twice. This Court has held that a suspect only needed to invoke his right to an attorney one time and need not invoke it on subsequent occasions when the police continued questioning him or her. [*Arizona v. Roberson,* 486 U.S. at 684, (holding that a suspect need not invoke his right to an attorney for each investigation that officers want to

interrogate him on while in custody).] As Justice Souter noted in *Davis,* that when a suspect understands her desire for counsel to have been ignored in contravention of the rights just read to her, by her interrogator, that further objection may only be futile and confession (true or not) as the only way to end the interrogation. [*Davis v. United States,* 512 U.S. at 472-473, Justice Souter concurring.] *Edwards* was designed to prevent the police from badgering a defendant into waiving his previously asserted rights. [*Minnick v. Mississippi,* 498 U.S. at 150.] Williams' policy clearly abrogated the "bright line" rule enunciated in *Edwards* which required that all questioning cease upon a request for an attorney.

The Indiana Court of Appeals departed from this "bright line" rule when it concluded that it was acceptable for Williams to ask "non-coercive" questions about Edmonds' "yes" response. The only evidence as to non-coercive questioning was from Williams. While Edmonds did not offer any such evidence on whether Williams used coercion in questioning her, Edmonds would point out that such a battle would be futile when it would be her word against Detective Williams and Detective Litchford, who accompanied Williams just in case such an allegation was made. [*See, Davis,* at 475, Justice Souter concurring, (officers rarely lose swearing matches against criminal defendants at suppression hearings.") Even though Edmonds did not testify as to whether Williams coerced her or not, Edmonds had the right to rely upon this Court's "bright line" rule prohibiting subsequent questioning after requesting an attorney. Any subsequent responses initiated by the police to Edmonds, after she wrote "yes" to the question "Do you wish to have an attorney at this time?", would be presumed involuntary and therefore inadmissible. [*McNeil v. Wisconsin,* 501 U.S. at177.] This was designed to prevent police from badgering people like Edmonds into waiving her previously asserted

right to an attorney. [*Id.*] The Indiana Court of Appeals departed from *Edwards* when it concluded that Williams could question Edmonds in a non-coercive manner about her request for an attorney. Once Edmonds invoked her right to an attorney by writing "yes" to the question, "Do you wish to have an attorney at this time?", Williams had no right to question her any further about that response.

Edmonds would point out that the underlying rational for adopting *Miranda* is quite apparent in this case. When this Court adopted *Miranda,* it was concerned with the interrogation process. This Court stated,: "[i]nterrogation takes place in privacy. Privacy results in secrecy and this in turn results in a gap in our knowledge as to what in fact goes on in the interrogation rooms." [*Miranda v. Arizona, 384* U.S. 436, 448, 16 L.Ed.2d 694, 86 S.Ct. 1602 (1966).]

Edmonds was place in an interrogation room that was equipped with recording equipment and Williams brought his own recording equipment. From past experiences, Williams contended that suspects were often confused about the waiver form.[7] In addition, Williams brought Litchford along to corroborate what transpired in the interrogation room in case there was some type of allegation asserted against him. Based upon these concerns, Edmonds wonders why Williams would deliberately choose not to use the recording equipment in the interrogation room or his hand-held recorder from the start of the interview to the end of the interview. Interestingly, Edmonds implicated the unknown male that entered Ruiz's motel room as Vincent Tillotson, who was

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[7]The Maryland Court of Appeals has concluded that any confusion in a waiver form should be construed against the author of the form which is the State. [*Billups v. State,* 135 Md.App. 345, 762 A.2d 609 (Md.Ct.App. 1999).] Edmonds would agree that any confusion in the waiver form was caused by the state and certainly should not be a basis to circumvent this Court's prohibition from questioning a suspect that has invoked her right to an attorney.

incarcerated at the time[8], and whose picture just happened to be in Williams' file at the time of the interview. While Williams claims Edmonds implicated Tillotson on her own initiative, which Litchford corroborated, Edmonds wonders what the tape would have shown had the interrogating officers elected to use it. Notwithstanding what happened in the interrogation room, this Court adopted a "bright line" rules to avoid the necessity of trial courts making such determinations. The statement obtained from Edmonds after she invoked her right to an attorney was involuntary and therefore inadmissible.

Williams advised Edmonds of her rights as required by *Miranda.* After being advised of her "Miranda rights", Edmonds was questioned about waiving those rights. Edmonds wrote "yes" to the question "Do you wish to have an attorney at this time?". This was an unambiguous and unequivocal request for an attorney. Once Edmonds' right to an attorney was invoked, Edmonds should never have been question, i.e. badgered, about her response. The "bright line" rule adopted by this Court to provide guidance to officers required that all questioning should have ceased. The trial court nor the Indiana Court of Appeals was required to determine whether Williams acted coercively when subsequently questioning Edmonds about her "yes" response under traditional due process standards nor did Edmonds need to engage in a swearing match against the officer at the suppression hearing as to what happened in the interrogation room. Once Edmonds invoked her right to an attorney, the subsequent statement was involuntary and therefore inadmissible.

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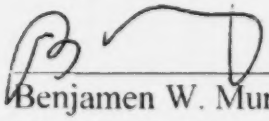
[8]At the time of the interview, Williams did not know that Vincent Tillotson was incarcerated. If Williams had known Tillotson was incarcerated at the time, then his picture probably would not have been in the file.

This Court has stated, "illegitimate and unconstitutional practices get their first footing....by slight deviations from legal modes of procedure." [*Miranda v. Arizona,* 384 U.S. at 459.] This Court must not tolerate slight deviations from the "bright line" rule enunciated in *Edwards.* This Court should grant Edmonds' petition for writ of certiorari from the Indiana Court of Appeals which elected to deviate from this Court's precedent firmly established in *Miranda v. Arizona,* 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966) and *Edwards v. Arizona,* 451 U.S. 477, 101 S.Ct. 1880, 68 L.Ed.2d 378 (1981). The trial court's denial of Edmonds' motion to suppress and the admission of her statement at trial was in contravention of this Court's bright line rule set out in *Edwards* and the judgment of the trial court should be reversed and remanded for a new trial with instructions that Edmonds' statement was involuntary and therefore inadmissible.

III. CONCLUSION

Based upon the foregoing, this Court should grant Edmonds' Petition for Writ of Certiorari from the Indiana Court of Appeals. This Court should find that Edmonds invoked her right to an attorney and the subsequently obtained statement was involuntary and therefore inadmissible. The trial court and Indiana Court of Appeals' opinion should be reversed and this matter remanded to the trial court with instructions to bar the admission of Edmonds' statement.

Respectfully submitted,



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